

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANWAR, *et al.*,

Plaintiffs,

- v -

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This Document Related To: All Actions

Master File No. 09-cv-118 (VM)

**THE CITCO DEFENDANTS' JOINDER IN THE LIMITED OBJECTIONS
OF PWC CANADA AND PWC NETHERLANDS TO
PLAINTIFFS' MOTION FOR FINAL SETTLEMENT APPROVAL**

Defendants, Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda) Limited, and The Citco Group Limited (collectively, the "Citco Defendants"), hereby join in PricewaterhouseCoopers LLP ("PwC Canada") and PricewaterhouseCoopers Accountants N.V. ("PwC Netherlands") (together, the "PwC Defendants")'s Limited Objections to Plaintiffs' Motion for Final Settlement Approval ("the PwC Defendants' Objections").

For the reasons set forth in the PwC Defendants' Objections, the Citco Defendants object to Paragraph 17 and Paragraph 21 of the Preliminary Approval Order, to the extent that these provisions are to be included in the Court's Final Approval Order.¹ The Citco Defendants, like the PwC Defendants, have standing to assert their objections where they are able to demonstrate

¹ As of the deadline for filing this objection, February 15, 2012, the Settling Parties have not proffered a Final Approval Order for consideration by the parties or the Court.

that they will sustain “formal legal prejudice as a result of the settlement.” (*See* the PwC Defendants’ Objections, p. 6, citations omitted). The PwC Defendants point out that they have been served with a complaint filed by a number of purported Fairfield Sentry investors in the Netherlands, and have argued in that proceeding that the Dutch Court should dismiss the claims against the PwC Defendants on various grounds, including that certain plaintiffs in that case are putative class members in this case. (*Id.*, p. 5).

Similarly, certain of the Citco Defendants have been sued in the Court of Amsterdam, the Netherlands, in a proceeding initiated on December 1, 2010, by Stichting Fairfield Compensation Foundation (“the Foundation”), as well as investors Colima International Limited and Merus Trident Trust Company (BVI) Limited. The Foundation purports to represent over 690 beneficial owners of shares of the Fairfield Sentry and Sigma funds. In this proceeding, the named Citco Defendants also argued that the claims against them should be dismissed or stayed because the plaintiffs in that action are putative class members in this case. By Judgment dated February 6, 2013, the Netherlands Court declined to dismiss or stay the action, stating: “That the class action procedure will be successful ... is not certain. Nor is it certain that the Investors, Colima and Merus, will then be granted compensation...”). (A copy of the Judgment and an English translation are attached hereto as Exhibit “A”).

For the same reasons set forth in the PwC Defendants’ Objections, it is inequitable to permit foreign investors to reap the benefits of a settlement by one set of defendants in this action without submitting to the jurisdiction of this Court and being bound by all aspects of this litigation. Should foreign investors, including the 690-plus investors represented by the Foundation, file Proofs of Claim in the U.S. action in order to benefit from the proposed Settlement, these investors should be deemed to have submitted to the jurisdiction of the U.S.

Court with respect to their claims against the Citco Defendants as well.² Paragraph 17 of the Preliminary Approval Order, to the extent it is incorporated into any final order, would unfairly preclude that argument in this Court.

The Citco Defendants further object to Paragraph 21 of the Preliminary Approval Order, to the extent it is incorporated into any final order, as it would prevent the Citco Defendants from becoming aware that these investors did in fact file a Proof of Claim, and of any amounts claimed or paid pursuant to the Proof of Claim. This would not only preclude the Citco Defendants from having the information from which to argue that these investors have submitted themselves to the jurisdiction of the U.S. Court, but would also preclude the Citco Defendants from making a claim that any sums received by them would be a set-off to any damages in the U.S. or the Netherlands proceedings.

Accordingly, and for the additional reasons set out in the PwC Defendants' Objections, the Citco Defendants respectfully submit that any Order issued by the Court approving the proposed settlement should not contain the language proposed in Paragraphs 17 or 21 of the Preliminary Approval Order.

² In that the plaintiffs in the Netherlands proceeding are not suing any of the settling defendants, it is likely that they will seek to participate in the distribution of these settlement payments in the U.S.

Dated: February 15, 2013.

Respectfully submitted,

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U.S. District Court for the Southern District of NY –
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